PBS

National Environmental Policy Act

NEPA Desk Guide

October 1999

U.S. General Services Administration
Washington, D.C. 20405

historic properties, not for all kinds of cultural resources; be careful in using such terminology in establishing study methods.

- Types of cultural resource expertise necessary (archeologist, architects, folklorists, landscape architects, geographers, engineers, and Native American religious specialists are not interchangeable; an appropriate interdisciplinary mix is necessary and defined based on scoping).

- Supplementary studies needed (for example, radiocarbon dating, paint analysis, archival research, interviews, subsurface radar or other non-destructive profiling, geomorphology studies, osteoanalysis).

- Nature of documentation required (reports, archivally stable photographs, maps, computer output of various kinds).

9.4.4 Study Results

Because of the variety of types of cultural resources, and the variety of types of cultural resource studies, no single list of "study results" is easily constructed.

In general, however, cultural resources assessment studies for NEPA compliance will result in the following types of items:

- A report, including description of qualifications of survey personnel, methods used during the survey, objectives of the survey, survey design, results of background research, results of file or archival searches, actual results of the field survey, evaluations of any resources located during the survey, and recommended GSA actions in light of the survey results.

- Maps, photographs, audio or videotapes, computer printouts and disks, results of special studies, and bibliographic material as appropriate.

- In some cases, completed standard forms (such as historic property inventory forms).

- Field notes and other background materials.

The FPO or RHPOs should be involved in the design and technical review of cultural resource studies to ensure they meet pertinent regulatory and professional standards and will provide program staff with the data needed both for NEPA analysis and for compliance with such pertinent other authorities as the ACHP Section 106 regulations (36 CFR 800) and the NPS NAGPRA regulations (43 CFR 10).

The level of detail seemingly required by the historic preservation regulations in particular—sufficient information to determine the eligibility of particular properties for inclusion in the National Register of Historic Places—can be very difficult and costly, if not impossible, to obtain at the early stage of planning when NEPA analysis must be performed. NEPA analysts are sometimes tempted to put off the work needed to comply with NHPA Section 106 until after a FONSI has been issued or an EIS has been finalized. This is very bad practice, however, since it places GSA in the position of making decisions without full data, in a manner inconsistent with the spirit if not the letter of both NEPA and NHPA. This is an unresolved problem that simply must be considered in designing a cultural resources assessment study.

9.5 DUE DILIGENCE REPORTS

9.5.1 Legal Requirements

"Environmental Due Diligence" is a term of art that describes the responsibilities of a landowner such as GSA to conduct an appropriate inquiry prior to purchase or devel-

opment of a parcel of commercial real estate and ensure that all “recognized environmental conditions” have been identified. A “recognized environmental condition” means the presence or likely presence of any hazardous substances covered under the terms of CERCLA, as well as petroleum products, asbestos, lead-based paint, radon, and other environmental hazards covered under other laws or industry practice.

By exercising such due diligence, GSA gains two benefits:

(1) it has access to the “innocent landowner defense” under CERCLA; and

(2) it has likely identified the presence of any hazardous materials on the site that may need remediation.

Due diligence requires, at a minimum, preparation of an environmental due diligence assessment often called a "Phase I Environmental Site Assessment" or simply a "Phase I." If the Phase I study indicates the likely presence of a “recognized environmental condition,” a “Phase II” characterization study must also be conducted.

9.5.2 Data Requirements

The legal standard of “appropriate inquiry” implies that the actual level of inquiry will vary, depending on the specific circumstances of the property in question.

Phase I studies are presumed valid for 180 days, although older ones may be used depending on the specific circumstances of the property.

Current industry practice as set forth in American Society for Testing and Materials (ASTM) Standards #E1527 (Environmental Site Assessments) and 1528 (Transaction Screen Process) describe the major data requirements for a Phase I study. Because Phase II studies are based on the results of Phase I, no standard data set is required for Phase II studies (see ASTM E 1903-97, “Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process,” February 1998).

Phase I Environmental Site Assessments require the following data to be collected:

(1) Based on a records review, including searches of Federal, State and local lists, data on the following types of sites within the following standard approximate minimum search distances:

- Federal NPL sites- 1.0 miles
- Federal CERCLIS list- .5 miles
- Federal RCRA TSDFs- 1.0 miles
- Federal RCRA generators—local
- Federal ERNS list-property only
- State hazardous. waste sites-1.0 miles
- State landfills-0.5 miles
- State leaking USTs-0.5 miles
- State registered USTs - local

The standard map for indicating site location is a United States Geological Survey (USGS) 7.5’ quadrangle map; other, non-standard maps may be used if the site location is not readily ascertainable from a USGS map, or if no USGS map is available for the study area.

Review records back to the first obvious developed use (including previous agricultural uses or placement of fill) or to 1940, whichever is earlier. Determine property uses from historical sources, but use common sense (i.e., very early properties need only be researched back to the point at which their use could have generated pollutants, not to their original settlement by the Pilgrims, the Spanish, or an Indian tribe).

(1) Use site reconnaissance to inspect the property, including exteriors and interiors of any buildings or structures, site setting, current and past uses of the property and adjoining properties, and roads of any features of the natural en-

vironment (geology, topography, hydrology, etc.) that may affect migration of hazardous substances to or from the property being reviewed.

(2) The review should especially note the existence of any odors, standing pools, containers, corrosion, stained soils, stressed vegetation, waste piles, HVAC systems, equipment containing PCBs, asbestos, possible lead-based paint, etc.

(3) Interviews with current and prior owners and occupants, as well as local government officials, are aimed at discovering specific information about site uses, either to fill in gaps in records reviewed or to corroborate information obtained from records.

9.5.3 Study Methods

Phase I studies involve reviewing records, visiting the site, and interviewing owners, occupants, and government officials. No specific methods for conducting such activities are prescribed in the standards, but these activities must be conducted by an "environmental professional," defined as a person with sufficient training and experience to accomplish these tasks and develop conclusions regarding the existence of "recognized environmental conditions" on the property. Phase I studies do not involve taking samples or conducting laboratory analysis.

Because much Phase I research is historical, it is usually cost-effective to coordinate such research with the cultural resources assessment (if one is performed).

Phase II studies do involve physical sampling and laboratory analysis. The ASTM guide for Phase II studies requires development of a work plan in which the specific sampling plan, chemical testing plan, and quality assessment/quality control procedures are defined. Field and laboratory analytical techniques for hazardous materials are usually defined by existing EPA and ASTM standards, which should guide development and review of the Phase II work plan. Phase II studies should also be coordinated with the cultural resources assessment if one is performed, both to maximize efficiency (auguring to identify USTs or waste plumes may provide information on buried archeological sites, and vice-versa) and to minimize damage to historic properties and other cultural resources (sampling material from the walls of a historic building may damage it).

9.5.4 Study Results

Phase I studies result in reports that describe the study, including documentation of research conducted, credentials of the environmental professional conducting the study, the environmental professional's opinion of the impact of any recognized environmental conditions in connection with the property, and the environmental professional's signature.

The report must have a Findings and Conclusions section that contains one of the following two statements:

Recognized Environmental Conditions Absent

"We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [ ] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property."

Recognized Environmental Conditions Present

"We have performed a Phase I Environmental Site Assessment in conformance

with the scope and limitations of ASTM Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [ ] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property except for the following: [list]."

Where the Phase I study shows that there are or may be "recognized environmental conditions" on the property, if GSA continues to plan use of the property it will usually be necessary to conduct a more detailed Phase II study to characterize the conditions more fully. Work to remediate the conditions (e.g., by removing the pollutants) would then be scheduled as part of the planned project.

9.6 FLOODPLAIN STUDIES

9.6.1 Legal Requirements

EO 11988 requires GSA to evaluate the potential effects of any actions it may take in a floodplain, and to ensure that its plans consider flood hazards and floodplain management needs.

The “floodplain” of concern is usually the “100-year floodplain,” which is defined as the area subject to a one percent (or greater) chance of flooding in any given year. For certain critical actions (i.e., those for which even a slight chance of flooding would be too great), the "500-year floodplain" (area subject to a 0.2 percent chance of flooding in a given year) is the area of concern. Guidelines originally published by the (now defunct) Water Resources Council in 1978, and now overseen by the Federal Emergency Management Agency (FEMA) provide guidance for determining whether an action is "critical." These FEMA guidelines ("Guidelines for Implementing Executive Order 11988;" Water Resources Council, February 10, 1978, 43 FR 6030-6055) should be maintained by the REQA and made available to program staff, together with related guidance material issued by FEMA.

Effects of an action on a floodplain include not only the effect of actually doing something on the floodplain, but also of inducing someone else to do something. If GSA constructs a building outside the floodplain that stimulates development on the floodplain, this floodplain development must be considered under EO 11988 and its implementing guidelines.

“Early public review” of proposed actions in a floodplain also is required. This review usually is coordinated with the public involvement process required under NEPA.

9.6.2 Data Requirements

GSA must determine whether its proposed action or alternatives will be located in or affect (e.g., by stimulating development of) a floodplain, as defined in the FEMA guidelines.

9.6.3 Study Methods

The FEMA guidelines establish an eight-step process to follow in assessing and addressing floodplain effects.

Step 1: Determine whether the action is likely to occur in or affect a 100-year floodplain. To do this, GSA must consult the official floodplain maps maintained by FEMA, called Flood Insurance Rate Maps (FIRMs).

If the area of interest is not covered by FIRMs, other maps prepared by the U.S. Army Corps of Engineers (USACE), USGS, or other Federal or State agencies may be used.

In the absence of any previously mapped data, a geologist, hydrologist, botanist or other qualified professional must conduct an archival and/or field study to determine